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January 11, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
U.S. DEPT. OF THE INTERIOR

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: **Petition for Section 11 Biennial Review, CC Docket No. 98-177**

Dear Ms. Salas:

Enclosed for filing in CC Docket No. 98-177 you will find an original and nine copies of "**Comments of ABC, Inc., CBS Corporation, National Broadcasting Company, Inc., and Turner Broadcasting System, Inc.**" Please date stamp the "stamp and return" copy of the comments for return by the messenger.

Please do not hesitate to contact me if you have any questions.

Sincerely,

*Randolph J. May*  
Randolph J. May

Enclosures

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

RECEIVED  
JAN 23 1998  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
 )  
1998 Biennial Regulatory Review -- )  
Petition for Section 11 Biennial Review )  
filed by SBC Communications, Inc., ) CC Docket No. 98-177  
Southwestern Bell telephone Company, )  
Pacific Bell, and Nevada Bell )

**COMMENTS OF ABC, INC., CBS CORPORATION, NATIONAL  
BROADCASTING COMPANY, INC., AND TURNER  
BROADCASTING SYSTEM, INC.**

ABC, Inc., CBS Corporation, National Broadcasting System, Inc. and Turner Broadcasting System, Inc. (collectively the "Networks"), by their attorneys, hereby submit their comments in response to the Notice of Proposed Rulemaking in the above-referenced proceeding.<sup>1</sup> In this proceeding, the Commission is seeking comment concerning several rules or categories of rules that SBC Communications, Inc. ("SBC") believes could be subject to deregulation or streamlining.<sup>2</sup> The particular proposal upon which the Networks comment herein is SBC's proposal to detariff special access services for all carriers because presumably SBC's detariffing proposal would apply to video and associated audio local channels.

**I. BACKGROUND**

The Networks are major users of full-time and occasional use video and associated audio

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<sup>1</sup> Notice of Proposed Rulemaking, CC Docket No. 98-177, released November 24, 1998 (hereinafter generally referred to as the "NPRM" or "Notice."). The NPRM was published at 63 Fed. Reg. 68418, December 11, 1998.

<sup>2</sup> SBC's proposals were contained in its Petition for Section 11 Biennial Review, filed May 8, 1998.

channels in connection with the operation of their broadcast and cable networks. They use local video channels provided by SBC and other providers to carry news, sports, and entertainment programming between and among their broadcast operations centers, affiliate stations, satellite uplink operators, and other points of video origination and distribution. Sometimes the local channels which are used to originate or terminate video programming are ordered on the Networks' behalf by an interexchange provider such as Vyvx which is providing the long haul service, and in other instances local channels are ordered by the Networks themselves. In either case, of course, the local channel is an integral part of the transmission.

The NPRM recites that "SBC indicates its belief that special access services, direct trunked transport, operator services, directory assistance and interexchange services are competitive and should be detariffed for all carriers."<sup>3</sup> The NPRM then "seek[s] comment on SBC's conclusions about competition for these services and whether detariffing would be appropriate as an exercise of our section 10 forbearance authority."<sup>4</sup> The Notice itself contains no information at all regarding the marketplace situation for any particular special access or other service. It merely cites to SBC's petition filed on May 8, 1998, as the document in which SBC claims that certain LEC services are competitive and, therefore, should be detariffed.<sup>5</sup>

## **II. DISCUSSION**

The Networks' interest in this proceeding arises because it is possible that SBC's petition, and the NPRM seeking comment on the proposals contained in SBC's petition, may be

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<sup>3</sup> NPRM, at para. 9.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

construed, wrongly in the Networks' view, to include detariffing of LEC local video and associated audio channels because such channels are considered special access channels.<sup>6</sup> To the extent this is the case, the Networks oppose such SBC proposal on the basis that a showing has not been made that the local video channel market is effectively competitive at this time. Thus, detariffing is not consistent with the public interest.

As explained above, the NPRM itself does not purport to provide any information concerning the marketplace status of the services which SBC claims should be detariffed. Instead, the Notice merely recites SBC's claim and refers to SBC's petition. The Networks have examined SBC's petition and, like the NPRM, nowhere does it address the marketplace situation for local video channels, or even refer to video services. Indeed, while the entire discussion concerning the competitive status of special access services is extremely cursory and wholly conclusory,<sup>7</sup> what discussion there is refers only to "high capacity special access services," presumably hi-cap data services. Indeed, confirmation that SBC's request is focused on high-cap data services is provided by the fact that the only study to which SBC refers is a paper produced by Quality Strategies, which examines high capacity circuits used by carriers and large business customers to transmit voice and data traffic. It does not mention video channels.

However meritorious SBC's petition possibly may be with regard to the other

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<sup>6</sup> Audio channels are associated with video channels in SBC's tariff and the tariffs of the other LECs. *See, e.g.*, Southwestern Bell Telephone Company Tariff FCC No. 73, Section 7.3.6 (Special Access Service - Video Service). Throughout these comments, references to local video channels will be understood to include associated audio signals.

<sup>7</sup> SBC Petition, at 21-23.

proposals for rule changes it puts forward,<sup>8</sup> it is clear that the Commission should not allow SBC to detariff local video channels because it has not provided any information purporting to make a showing that the local channel marketplace is competitive. In any event, it is the Networks' position that such market is not sufficiently competitive to warrant detariffing at this time, even though it may have become more competitive than in the days when AT&T and the local exchange companies had the lion's share of the market.

The Networks still rely on SBC for full-time and occasional use channels. For example, each of the Networks leases multiple full-time channels from SBC's Pacific Bell unit in the Los Angeles area. When PacBell proposed recently to revise its tariff to impose a new usage-sensitive charge for switching at a video channel hub, the Networks filed a petition pointing out that under PacBell's tariff proposal a broadcaster could be charged \$21,600 in a month for the very same activity that heretofore it was charged less than \$100.00.<sup>9</sup> In that instance, the tariff review process provided a means whereby PacBell's customers could raise issues of reasonableness concerning PacBell's tariff proposal. After the Networks' and other petitions were filed, PacBell withdrew its tariff proposal. Without the availability of the tariff review process, the Networks and other broadcasters and cable networks likely would have experienced substantial rate increases in

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<sup>8</sup> For example, SBC targets rules relating to rate-of-return prescriptions as a vestige of regulation no longer needed under price cap regulation. SBC may well be correct that there are rules still on the books which have not been revised or eliminated to account for other regulatory developments such as the implementation of the price cap regime. NPRM, at para. 7. The determination that the Commission is asked to make in that instance -- whether a rule is no longer necessary under a new regulatory paradigm -- is of a different order than a request that the Commission make a factual determination that carrier services should be detariffed because sufficient competition is alleged to exist.

<sup>9</sup> See Networks' Petition to Reject or to Suspend and Investigate Pacific Bell Transmittal No. 2000, filed August 31, 1998.

connection with the video channels acquired from PacBell without any change whatsoever in the service provided.

As for occasional use service, the Pope's upcoming visit to St. Louis in the last week in January illustrates broadcasters' continued reliance on the incumbent telephone company. The Networks' operational personnel report that they, or other providers acting on their behalf, will acquire occasional use channels from SBC in order to cover this event. While it is true that competitive providers ("CLECs") have emerged in most major metropolitan areas, including St. Louis, the Networks report that these CLECs focus their marketing efforts primarily on high capacity voice and data services for large business customers and that they are not much interested in providing occasional video channels.

Thus, if the Commission even considers granting SBC's conclusory proposal for detariffing special access services such as high capacity data and voice services, it should decline specifically to grant such relief with regard to local video channels.<sup>10</sup> To the extent that SBC is concerned, however, about losing business to new competitors, the Networks would not object to granting streamlined tariff relief for proposed rate decreases so that such proposals could be filed on a day's notice.<sup>11</sup> This targeted streamlining would allow SBC to respond quickly to perceived threats

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<sup>10</sup> It goes without saying that based on the lack of showing that local video channels are subject to effective competition, the Section 10 forbearance test has not been met. 47 U.S.C. 160. Enforcement of the Commission's current tariffing rules is "necessary for the protection of consumers," and forbearance of these regulations would not be "consistent with the public interest."

<sup>11</sup> This is the phased approach which the Commission adopted recently with regard to video channels provided by COMSAT. It distinguished between rate decrease and rate increase proposals and granted streamlined relief only for the former. See COMSAT Corporation, File No. 60-SAT-ISP-97, released April 28, 1998, at para. 13.

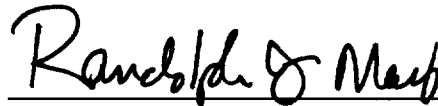
to competition by lowering rates, but would preserve the current (already considerably streamlined)<sup>12</sup> tariff review process with regard to rate increase and service change proposals.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should not allow SBC or other local exchange carriers to detariff local channel video and associated audio services.

**Respectfully submitted,**

**ABC, INC.  
CBS CORPORATION  
NATIONAL BROADCASTING COMPANY, INC.  
TURNER BROADCASTING SYSTEM, INC.**



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**January 11, 1999**

**Their Attorneys**

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<sup>12</sup> Most of the tariffs filed by price cap LECs are subject to only 15 days' notice under the streamlined process contained in Section 204(a)(3) of the Communications Act, as amended, 47 C.F.R. § 204(a)(3).

## **CERTIFICATE OF SERVICE**

I, Elyse N. Sanchez, do hereby certify that true and correct copies of the foregoing, "Comments of ABC, Inc., CBS Corporation, National Broadcasting Company, Inc. and Turner Broadcasting System, Inc." were served by hand or first-class U.S. mail, postage prepaid, this 11th day of January, 1999, on the following:

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